

BEFORE THE  
**FEDERAL COMMUNICATIONS COMMISSION**  
 WASHINGTON, D.C. 20554

ORIGINAL

In re

Amendment of Section 73.202(b)  
 TABLE OF ALLOTMENTS,  
 FM BROADCAST STATIONS  
 (Mason, Texas)

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)  
)

MM Docket No. 99-215  
 RM-9337

RECEIVED

AUG 2 1999

To: The Chief, Allocations Branch,  
 Policy and Rules Division, Mass Media Bureau

FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

**COUNTERPROPOSAL**

Munbilla Broadcasting Corporation (*MBC*) hereby files its Counterproposal in response to the Commission's Notice of Proposed Rule Making (*NPRM*), 64 Fed. Reg. 33237 (published June 22, 1999), in the instant proceeding.

**I. BACKGROUND**

1. The Commission issued its NPRM in response to BK Radio's Petition for Rule Making, which seeks the allotment of Channel 239C2 at Mason, Texas, as a second local FM broadcast service.<sup>1</sup> BK Radio requests allotment of Channel 239C2 to Mason so that BK may shift its contested application for Channel 249C2, File No. BPH-960823MF, to Channel 239C2 without loss of cut-off protection.

<sup>1</sup> BK Radio originally petitioned requesting the allotment of Channel 273C2. On January 5, 1999, BK amended its petition to propose Channel 239C2 rather than Channel 273C2.

2. Three applicants compete for Channel 249C2 at Mason: BK (the petitioner); Foxcom, Inc. (File No. BPH-960826MH); and Jayson D. and Janice M. Fritz (File No. BPH-960826MS). If the mutual exclusivity persists, the Commission will send the three to an auction for the Class C2 facility. See Implementation of Section 309(j) of the Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, First Report and Order in MM Docket No. 97-234, GC Docket No. 92-52, and Gen Docket No. 90-264, 13 FCC Rcd 15920 (1998), recons., Memorandum Opinion and Order, 64 Fed. Reg. 24523 (published May 7, 1999).

3. BK seeks to avoid having to itself participate in an auction through allotment of at least one additional channel to Mason, citing Copeland, Kansas, 5 FCC Rcd 7682 (1990). With regard to the two other Channel 249C2 applicants, BK asserts that Channel 273C2 is available for either Foxcom, Inc. or the Fritzes, and that:

- either could amend to specify Channel 273C2 while retaining cut-off protection; and
- the remaining applicant would retain Channel 249C2.

BK Radio also claimed that the Commission can also allot Channel 245C2 and Channel 288C2 to Mason. BK urges adoption of its proposal, arguing that resolving the current conflict between three mutually exclusive applications would further the public interest, and citing Albion, Nebraska, 10 FCC Rcd 3183 (1995).

4. The NPRM recognizes the FCC can allot Channel 239C2 to Mason consistent with spacing requirements, albeit at a different restricted site than the one BK proposed. NPRM at n. 2. The NPRM correctly rejects BK's contention that the FCC can allot Channel 245C2 and Channel 288C2 for other expressions of interest or for either Foxcom or the Fritzes. Id. at n.

3.<sup>2</sup> The NPRM does say that the FCC could allot Channel 273C2 to Mason for either Foxcom or the Fritzes. But this assumes no Counterproposal advancing the use of Channel 273C2 elsewhere. The NPRM further cautions that if others state an interest in the use of Channel 273C2 at Mason, the Commission could not allot the Channel consistent with Cheyenne, Wyoming, 62 FCC 2d 63 (1976).

## II. THE MERITS

5. Maxagrid hereby advances the following Counterproposal in this proceeding:

- the allotment of Channel 239C2 to Menard, Texas, as a first local service;
- the substitution of Channel 273C2 for Channel 249C2 at Mason, Texas; and
- the allotment of Channel 249C2 to Fredericksburg, Texas, as a second local service.

Menard, Texas is an incorporated city with a 1990 U.S. Census population of 1606 people. It is the county seat of Menard County.<sup>3</sup> The Menard Chamber of Commerce reports that Menard has a number of local business and annual retail activity in excess of \$4,100,000. There are ten churches and three schools (Menard Grammar, Middle, and High Schools) which serve the population of Menard and the surrounding area. Menard National Bank and the Bevans State

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<sup>2</sup>However, in discussing the matter of Channel 245C2, the FCC seems to suggest that MM Docket No. 95-49 is still open. That proceeding resulted in the allotment of Channel 285C3 to Marble Falls, Texas and Channel 242A to Llano, Texas. In the process, the FCC rejected a Counterproposal to allot Channel 242C2 to Menard, Texas. Finality attached to that outcome some time ago, and there is no pending proposal to allot Channel 242C2 to Menard.

<sup>3</sup>The Commission has recognized the significance of a community's status as the County seat. See, e.g., Berryville, Virginia and Harper's Ferry, West Virginia, 35 RR 2d 301 (1975); Danville and Versailles, Kentucky, 11 RR 2d 1657(1967).

Bank provide financial services. Health services are provided by the Shamrock Clinic of Menard, the Menard Medical Clinic, and the Menard Manor Retirement Home. The Menard courthouse houses local governmental offices. Public health and safety are the province of the Menard County Sheriff's Office, which has ten employees, the Menard County Volunteer Fire Department, and the Menard County Volunteer Emergency Medical Service.

6. Menard is clearly deserving of a local service, and the Commission can allot Channel 239C2 to Menard in full compliance with the applicable technical (city-grade and spacing) requirements. See Exhibit A, the Technical Statement of John Furr, MBC's technical consultant.

7. As an additional element of its Counterproposal, MBC urges the Commission to substitute Channel 273C2 for Channel 249C2 at Mason, and to allot Channel 249C2 to the community of Fredericksburg, Texas, as Fredericksburg's first local FM service (and as its second local -- and only protected full-time -- service). Fredericksburg is an incorporated city with a 1990 Census population of 6,934. The town was founded May 8, 1846, by German immigrants under the auspices of the Society for the Protection of German Immigrants in Texas, also known as the *Adelsverein*. It was named for Prince Frederick of Prussia, the highest-ranking member of the "Adelsverein."

8. Fredericksburg has its own web site, <http://www.fredericksburgtexas.net/>, which provides a wealth of demographic data about the community. MBC incorporates those data into this Counterproposal by this express reference. It is interesting to note that the city is a significant provider of electric power to the community. Fredericksburg also provides drinking water and has its own professional police and fire departments. The city also is the site of a

college campus (a branch of the University of Texas system) and a 61-bed hospital. The town has four banks and a wide array of business establishments and professional services.

Fredericksburg has only one local radio station, KNAF(AM), 910 kHz, which operates at 1 kW during daylight hours. The station has limited, unprotected nighttime service (174 watts).

Fredericksburg clearly deserves a full-time protected service.

9. As Exhibit A demonstrates, the Commission can allot Channel 249C2 to Fredericksburg in complete compliance with city-grade and spacing requirements, if the Commission imposes an appropriate site restriction and if the Commission substitutes Channel 273C2 for Channel 249C2 at Mason. MBC urges the Commission to do so.

10. The FCC judges FM allotment proposals according to the following set of priorities:

- (1) first aural service;
- (2) second aural service;
- (3) first local service; and
- (4) other public-interest factors,

with priorities (2) and (3) sharing co-equal rank. Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 92 (1982).

4. Measured against these standards, MBC's Counterproposal outranks BK's and the NPRM's proposal. The allotment of Channel 239C2 to Menard satisfies Priority Three, and the allotment of Channel 249C2 to Fredericksburg satisfies Priority Four. At the same time, the allotment of Channel 273C2 to Mason (another Priority Four allotment) provides a fully

acceptable substitute for the current Channel 249C2,<sup>4</sup> for which the three applicants are contesting. Channel 273C2, along with the current Channel 224A, will provide Mason (1990 Census population 2041) with two local full-time protected radio services -- one service for every 1,021 people. Channel 239C2 will provide Menard with one local full-time protected service for its 1,606 people (1990 Census value). And Channel 249C2 will provide Fredericksburg with a first full-time protected (and first competing local) service -- one local service for every 3,467 people (based on 1990 Census data). By contrast, BK's proposal would provide Mason with third and fourth local services, both Category Four proposals -- one service for every 510 people in the town.

11. One Priority Three proposal (first local service to Menard) plus two Priority Four proposals (second local/first full-time service to Fredericksburg and the substitute channel for Mason) clearly outrank BK's two Priority Four proposals (third and fourth local services to Mason). MBC's Counterproposal must prevail. Revision of FM Assignment Policies and Procedures, supra.

12. It is true that the Channel 249C2 applicants will have to amend their applications to specify Channel 273C2 and to compete at auction for the Class C2 facility. However, the Commission routinely orders mere applicants to amend to specify new channels, Andalusia, Alabama, 49 Fed. Reg. 32201 (Aug. 13, 1984), and does not even require reimbursement of their costs of amendment. See, e.g., Casa Grande, Arizona, et al., 5 FCC Rcd 157, 158 (MMB, 1990). In addition, the inflow of auction proceeds to the Federal Treasury will itself benefit the public.

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<sup>4</sup> Vero Beach, Florida, 66 Rad. Reg. (P&F) 2d 156, 157 (1989).

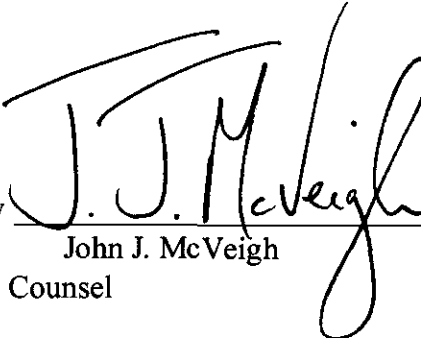
13. As the proponent of the Fredericksburg and Menard allotments, MBC hereby states its intention to apply for the new channels if the Commission allots the frequencies and, if the Commission authorizes MBC to do so, to construct the new Fredericksburg and Menard facilities promptly, to place the new stations on the air, and to seek licenses to cover the construction permits.

#### CONCLUSION

Based on the foregoing, Munbilla Broadcasting Corporation respectfully urges the Commission to issue a Report and Order, as expeditiously as possible, adopting this Counterproposal in place of the proposal set forth in the Notice of Proposed Rule Making in this proceeding. That will clearly better serve the public interest than adopting the NPRM's suggested course of action.

Respectfully submitted,

**MUNBILLA BROADCASTING CORPORATION**

By   
John J. McVeigh  
Its Counsel

John J. McVEIGH,  
ATTORNEY AT LAW  
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(301) 596-1655

Date: August 2, 1999

## **EXHIBIT A**



COUNTER-PROPOSAL ALLOCATION STATEMENT

This statement is prepared on behalf of Munbiella Broadcasting Corp. ("MBC"). This is a counter-proposal to the allocation and to BK Radio proposal, who is an applicant for Channel 249C2 in Mason, Texas. BK seeks to add two new Channels to Mason, Texas, 239C2 and 273C2. This is a summary of the counter-proposal

<u>City</u>	<u>Has</u>	<u>Delete</u>	<u>Add</u>
Mason, Texas	249C2	249C2	273C2
Menard, Texas	--	--	239C2
Fredericksburg, TX	--	--	249C2

Mason, Texas, Channel 273C2

This channel was offered by BK Radio as an additional channel to Mason, Texas. MBC accepts this proposal and includes Exhibit A to verify the coverage over the city and Exhibit B is an allocation study of this site as Class C2. This site is 16 km from Mason.

Menard, Texas, Channel 239C2

This proposal requests the addition of 239C2 to Menard, Texas as a first radio service. The proposed reference coordinates for Menard Channel 239C2 are:

Latitude 30°52'20" North, Longitude 99°51'30" West

This site is 8.5 kilometers southwest (234° True) of the reference coordinates of Menard, Texas. From this site the entire city of Menard will be served with the 70 dB $\mu$  contour as required by §73.315(a) and §73.315(b) of the FCC Rules as shown in Exhibit C.

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COUNTER-PROPOSAL

MUNBIELLA BROADCASTING  
MASON, TX  
NARRATIVE

Exhibit D is an allocation study of this site as Class C2. This demonstrates compliance with all requirements as set forth in §73.207 of the FCC Rules, except as it relates to KLTO counter-proposal for Menard. The resolution of docket 95-49 did not allocate the channel to Menard, so there exists no frequency assignment in Menard.

Using this reference coordinate, the coverage of this proposed site was calculated according to §73.313 of the Rules. The 60 dBu (1 mV/m) contour will encompass 8,439 square kilometers and 9,321 persons. Menard, Texas is designated as a City in the US Census and has a population of 1,606 persons.

Fredericksburg, Texas, Channel 249C2

This proposal requests the addition of 249C2 to Fredericksburg, Texas as a first FM radio service. The proposed reference coordinates for Fredericksburg Channel 249C2 are:

Latitude 30°26'25" North, Longitude 98°59'36" West

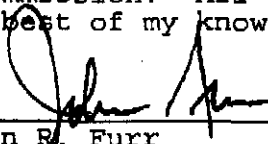
This site is 22 kilometers northwest of the reference coordinates of Fredericksburg, Texas. From this site the entire city of Fredericksburg will be served with the 70 dB $\mu$  contour as required by §73.315(a) and §73.315(b) of the FCC Rules as shown in Exhibit C. Exhibit D is an allocation study of this site as Class C2. This demonstrates compliance with all requirements as set forth in §73.207 of the FCC Rules.

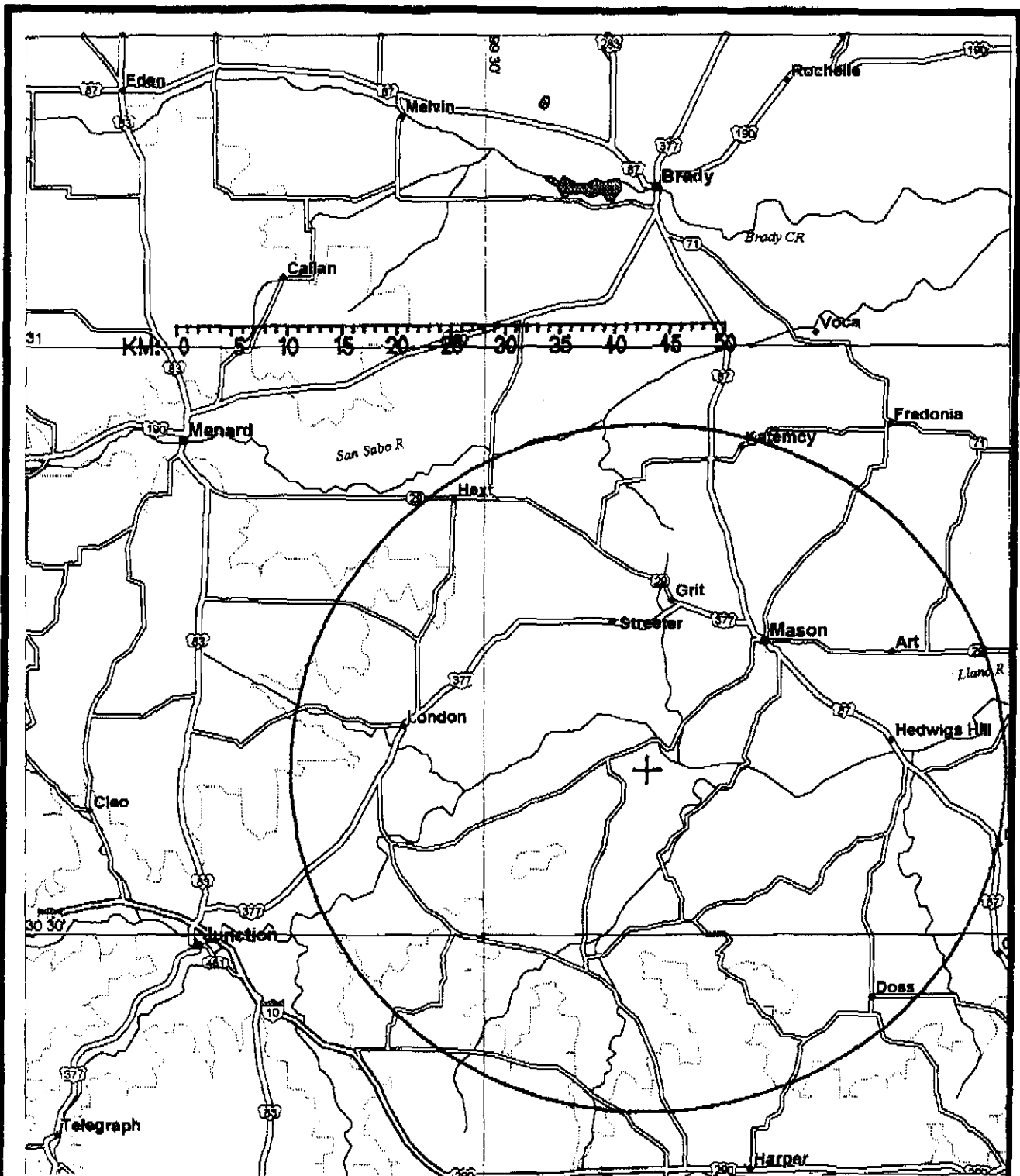
Using this reference coordinate, the coverage of this proposed

site was calculated according to §73.313 of the Rules. The 60 dBu (1 mV/m) contour will encompass 8,262 square kilometers and 28,050 persons. Fredericksburg, Texas is designated as a City in the US Census and has a population of 6,934 persons. KNAF (AM), 910 kHz, is the only radio frequency assignment to Fredericksburg.

I, John R. Furr, am a Communications Consultant and I represent Munbiella Broadcasting Corp.. My qualifications are a matter of record with the Commission. All statements made herein are true and correct to the best of my knowledge and belief.

July 30, 1999

  
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John R. Furr



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MASON CITY COVERAGE

MUNIELLA BROADCASTING  
MASON, TX  
EXHIBIT A

07-30-1999

John Furr &amp; Associates Inc.

PAGE 1

FM Study for: ALLOC  
Location: MASON, TX  
Call City, State  
Status Proponent

FCC Database Date: 8/1999 30-38-21  
Channel Class: C2 99-20-36  
Chan Class Freq kW Latitude Dist. Required  
File Number HAAT Longitude Azm. Clear (km)

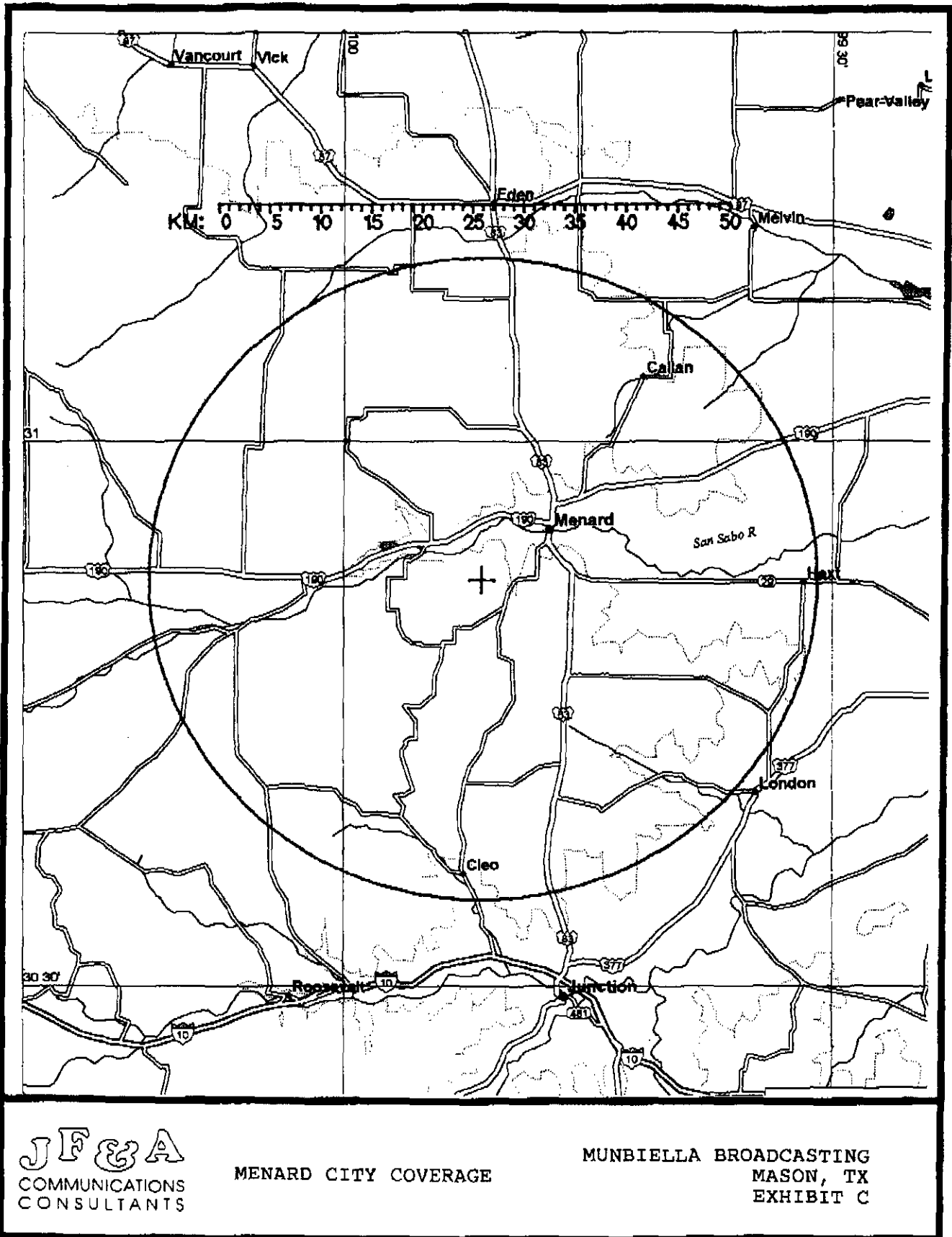
&gt;&gt;&gt;&gt;&gt;&gt; Study For Channel 273 102.5 MHz &lt;&lt;&lt;&lt;&lt;&lt;&lt;

ALLOC	MASON, TX	273 C2 102.5	30-38-21	0.0	190	
ADD	BK Radio	Docket-99-215	0	99-20-36	0.0	SHORT
ALLOC	LLANO, TX	275 A 102.9	30-42-24	55.16	55	
ADD	Elgin FM Limited Part	Docket-99-131	0	98-46-23	82.1	CLOSE
ALLOC	LLANO, TX	275 A 102.9	30-42-24	55.16	55	
ADD	Elgin FM Limited Part	-	0	98-46-23	82.1	CLOSE
KTFM	SAN ANTONIO, TX	274 C1 102.7 100.	29-25-09	158.57	158	
LIC	Waterman Broadcasting	BLH-801009AC 204	0	98-29-06	148.3	CLOSE
ALLOC	LLANO, TX	271 A 102.1	30-43-14	55.65	55	
ADD	Elgin FM Limited Part	-	0	98-46-13	80.5	CLOSE
KVCO	CROSSPLAINS, TX	272 C1 102.3	32-07-42	165.8	158	
ADD	Gulfwest B/C Company	RM-	0	99-11-18	5.1	CLOSE
KSTA	COLEMAN, TX	272 C3 102.3	31-51-16	135.0	117	
ADD	First Broadcasting Ma	Docket-98-198	0	99-25-36	356.6	CLEAR
KBRQ	HILLSBORO, TX	273 C1 102.5 100.	31-49-29	246.1	224	
LIC	Sonace Waco License S	BLH-840326AS 137	0	97-09-33	57.2	CLEAR
KPEZ	AUSTIN, TX	272 C2 102.3 26.	30-13-24	152.7	130	
LIC	Clear Channel Radio L	BMLH-980327KA 209	0	97-49-39	107.2	CLEAR
KEEP	BANDERA, TX	276 A 103.1	29-51-22	90.2	55	
ADD	Reding Broadcasting	Docket-90-466	0	99-05-25	164.3	CLEAR
KEEP	BANDERA, TX	276 A 103.1	29-51-22	90.2	55	
ADD	Reding Broadcasting	Docket-98-55	0	99-05-25	164.3	CLEAR
ALLOC	BRADY, TX	219 A 91.7	31-08-06	55.0	15	
VAC		Docket-20967	0	99-20-04	0.9	CLEAR

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COMMUNICATIONS  
CONSULTANTS

MASON ALLOCATION STUDY

MUNBIELLA BROADCASTING  
MASON, TX  
EXHIBIT B



07-28-1999

John Furr &amp; Associates Inc.

PAGE 1

FM Study for: MENARD  
 Location: MENARD, TX  
 Call City, State  
 Status Proponent

FCC Database Date: 7/1999  
 Channel Class: C2  
 Chan Class Freq kW Latitude Dist. Required  
 File Number HAAT Longitude Azm. Clear (km)

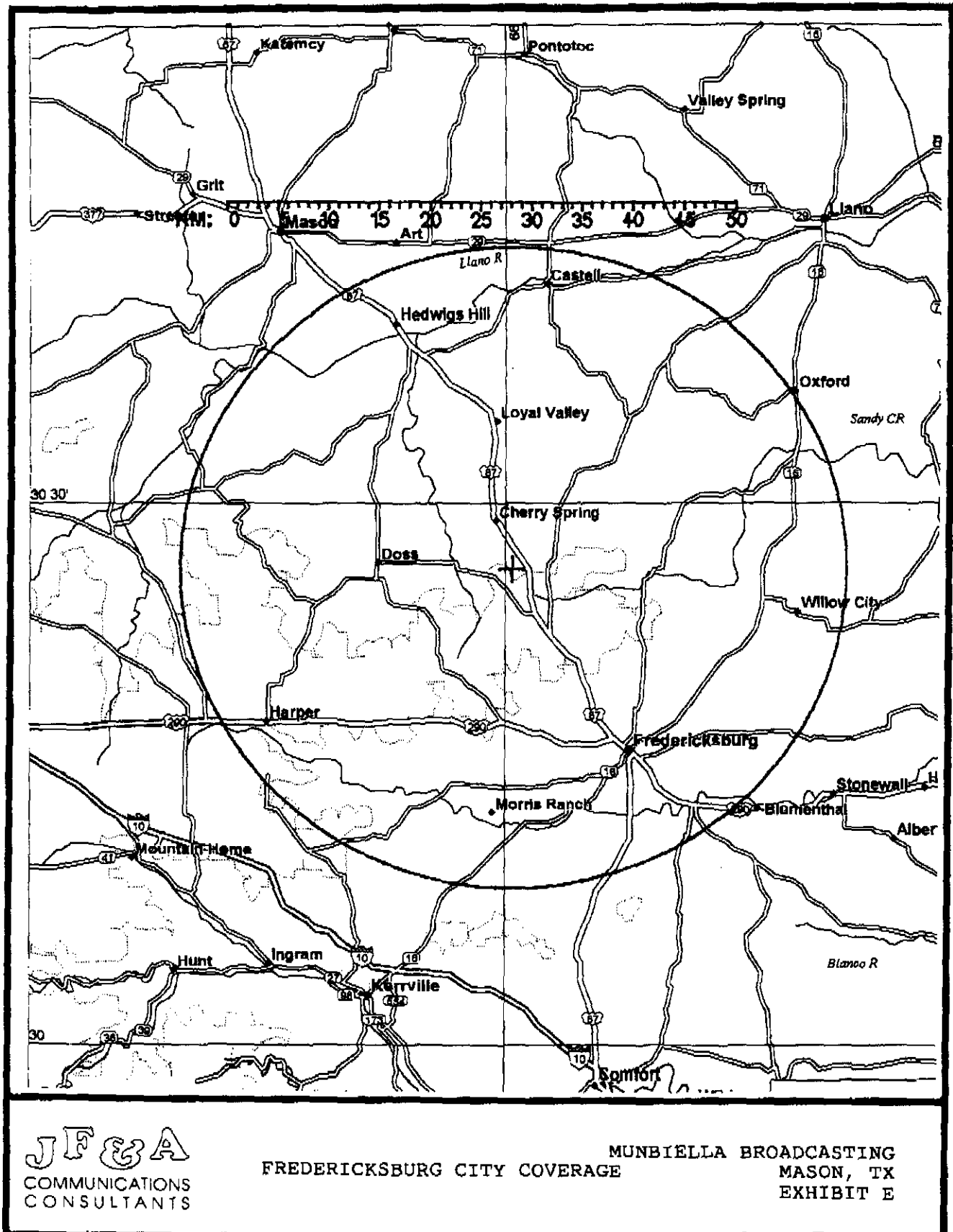
Study For Channel 239 95.7 MHz

ALLOC	MASON, TX	239 C2	95.7		30-33-24	53.7	190	
ADD	BK Radio	Docket-99-215		0	99-25-34	130.0	-136.3	SHORT
		Use of 73.215 for short spacing requires:				177	-123.3	SHORT
KNELFM	BRADY, TX	237 A	95.3	3.00	31-07-27	55.10	55	
LIC	Farris Broadcasting,	BLH-790806AP	91		99-21-34	59.0	+0.10	CLOSE
ALLOC	BIG SPRING, TX	239 C2	95.7		32-09-00	201.8	190	
VAC		-		0	101-21-50	315.1	+11.8	CLOSE
KBSTFM	BIG SPRING, TX	239 C2	95.7	33.	32-13-13	212.4	190	
APP	Equicom. Inc.	BPH-990524ID	140		101-26-25	315.3	+22.4	CLEAR
XHRGFM	CIUDAD ACUNA, CI	238 B	95.5	3.52	29-18-17	202.3	164	
		-		52	100-55-42	211.1	+38.3	CLEAR
ALLOC	CIUDAD ACUNA, CI	238 B	95.5		29-18-17	202.3	164	
		-		0	100-55-42	211.1	+38.3	CLEAR

**JF&A**  
 COMMUNICATIONS  
 CONSULTANTS

MENARD ALLOCATION STUDY

MUNBIELLA BROADCASTING  
 MASON, TX  
 EXHIBIT D





07-30-1999

John Furr &amp; Associates Inc.

PAGE 1

FM Study for: FRED FCC Database Date: 8/1999 30-26-25  
 Location: FREDERICKSBURG, TX Channel Class: C2 98-59-36  
 Call City, State Chan Class Freq kW Latitude Dist. Required  
 Status Proponent File Number HAAT Longitude Azm. Clear (km)

&gt;&gt;&gt;&gt;&gt;&gt; Study For Channel 249 97.7 MHz &lt;&lt;&lt;&lt;&lt;&lt;&lt;

ALLOC	MASON, TX	249 C2	97.7	30-31-00	14.6	190	
VAC		Docket-89-84	0	99-07-00	305.6	-175.4	SHORT
		Use of 73.215 for short spacing requires:	177		-162.4		SHORT
FA VAC	MASON, TX	249 C2	97.7	30-31-00	14.6	190	
DEL	Gulfwest B/C Company	RM-	0	99-07-00	305.6	-175.4	SHORT
		Use of 73.215 for short spacing requires:	177		-162.4		SHORT
NEW	MASON, TX	249 C2	97.7 50.	30-31-40	16.4	190	
APP	Fritz, Jayson D. and	BPH-960826MS	150	99-07-51	306.3	-173.6	SHORT
		Use of 73.215 for short spacing requires:	177		-160.6		SHORT
NEW	MASON, TX	249 C2	97.7 50.	30-33-57	18.1	190	
APP	Foxcom, Inc.	BPH-960826MH	150	99-06-49	320.4	-171.9	SHORT
		Use of 73.215 for short spacing requires:	177		-158.9		SHORT
NEW	MASON, TX	249 C2	97.7 50.	30-33-58	18.1	190	
APP	BK Radio	BPH-960823MF	150	99-06-48	320.5	-171.9	SHORT
		Use of 73.215 for short spacing requires:	177		-158.9		SHORT
KVCO	LURING, TX	249 C2	97.7	29-31-59	164.4	190	
ADD	Gulfwest B/C Company	RM-	0	97-38-42	127.4	-25.6	SHORT
		Use of 73.215 for short spacing requires:	177		-12.6		SHORT
KWTXFM	WACO, TX	248 C	97.5 97.0	31-19-19	187.82	188	
LIC	Gulfstar Communicatio	BMLH-881209KA	478	97-18-58	58.2	-0.18	CLOSE
KAJA	SAN ANTONIO, TX	247 C	97.3 98.	29-31-25	104.89	105	
LIC	Clear Channel Holding	BMLH-981001KA	300	98-43-25	165.6	-0.11	CLOSE
KWTXFM	WACO, TX	248 C	97.5 100.	31-20-16	189.23	188	
CP	Capstar Royalty II Co	BMPH-981125IC	430	97-18-36	57.8	+1.23	CLOSE
KEEP	BANDERA, TX	252 A	98.3 1.65	29-51-22	65.4	55	
LIC	James G. Withers	BLH-910620KD	131	99-05-25	188.2	+10.4	CLOSE
KEEP	BANDERA, TX	252 A	98.3	29-51-22	65.4	55	
DEL	Reding Broadcasting	Docket-98-55	0	99-05-25	188.2	+10.4	CLOSE
KEEP	BANDERA, TX	252 A	98.3	29-51-22	65.4	55	
DEL	Reding Broadcasting	Docket-90-466	0	99-05-25	188.2	+10.4	CLOSE
KEEP	BANDERA, TX	252 A	98.3 1.65	29-51-21	65.5	55	73.215
CP	James G. Withers	BPH-990608IB	131	99-05-26	188.3	+10.5	CLOSE
KGKLFM	SAN ANGELO, TX	248 C1	97.5 100.	31-29-46	179.2	158	
LIC	KGKL, Inc.	BLH-851101KD	125	100-24-50	311.1	+21.2	CLEAR
ALLOC	SAN CARLOS, CI	248 C	97.5	29-01-45	241.8	215	
		-	0	100-54-00	230.2	+26.8	CLEAR

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 CONSULTANTS

FREDERICKSBURG ALLOCATION STUDY

MUNBIELLA BROADCASTING  
 MASON, TX  
 EXHIBIT F

**CERTIFICATE OF SERVICE**

I hereby certify that I have, this Second day of August, 1999, sent copies of the foregoing **COUNTERPROPOSAL**, by first-class United States mail, postage prepaid, to:

Anne Goodwin Crump, Esq.  
Fletcher, Heald & Hildreth  
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Counsel to the Fritzes

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Counsel to BK Radio



John J. McVeigh